

**CREDIT UNION DIVISION[189]**

**Adopted and Filed**

**Rule making related to votes of the membership and investment and deposit activities for credit unions**

The Credit Union Division hereby amends Chapter 12, “Votes of the Membership,” and Chapter 17, “Investment and Deposit Activities for Credit Unions,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 533.107(6).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 533.107, 533.203, 533.205(7), 533.301(5) and 533.301(25).

*Purpose and Summary*

The amendments in Chapter 12 reflect modifications to the board-of-directors nomination process allowing for nomination notification by newsletter or other written communication and include a reduction in the number of days required before the close of balloting to allow for more time for ballots to be submitted prior to the annual meeting. The amendments in Chapter 17 reflect recent changes made to permissible investments for federal credit unions which Iowa is adopting for its state-chartered credit unions with respect to charitable donation accounts and bank notes.

*Public Comment and Changes to Rule Making*

The proposed amendments were approved by the Credit Union Review Board on December 5, 2017. Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 31, 2018, as **ARC 3600C**. Two comments were received regarding the obligation of the credit union to notify its members of the opportunity to nominate an individual for the board of directors, the application of subrules 12.2(2) and 12.3(7), and the consequences for violating paragraph 189—17.21(533)“3.”

Changes to the Adopted and Filed rule making include clarification regarding the obligation to notify each credit union member of the opportunity to nominate an individual for the board of directors and clarification regarding the application of subrules 12.2(2) and 12.3(7) to subrule 12.2(5). Additional changes include clarification regarding consequences for violating paragraph 189—17.21(533)“3.”

*Adoption of Rule Making*

This rule making was adopted by the Credit Union Review Board on March 19, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Credit Union Division for a waiver of the discretionary provisions, if any, pursuant to rule 189—17.20(533) and 189—Chapter 23.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on May 16, 2018.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 12.2(5):

**12.2(5) *Nomination notification by newsletter.*** The board of directors may determine that the entire credit union membership will be notified via newsletter or other written communication of the opportunity to nominate an individual for the board of directors.

*a.* If the membership is notified of nominations via newsletter or other written communication at least 90 days before the annual meeting, the secretary shall:

(1) Send the newsletter or other written communication to the entire membership via U.S. mail or electronic mail to members who have opted to receive notices or statements electronically and indicate a physical location or email address where nominations can be sent;

(2) Indicate in the notice that there will be no nominations from the floor at the annual meeting; and

(3) Indicate in the notice that the nominating committee will vet the candidates and present a list of the eligible candidates prior to the voting period.

*b.* If the board of directors utilizes the nomination notification by newsletter pursuant to this rule, then nominations shall not be taken from the floor at the annual meeting as set forth in subrule 12.3(7) and nomination notifications made pursuant to this rule are not subject to the nomination-by-petition process in subrule 12.2(2).

ITEM 2. Amend subparagraph **12.3(3)“d”(1)** as follows:

(1) The close of balloting for ballots submitted other than in person during voting at the annual meeting shall be at least ~~five~~ two days prior to any meeting where voting will occur.

ITEM 3. Amend paragraph **17.14(6)“e”** as follows:

*e.* Bank notes with ~~original~~ weighted average maturities of less than ~~5~~ five years.

ITEM 4. Adopt the following **new** subrule 17.14(12):

**17.14(12) *Charitable donation accounts.*** An Iowa-chartered credit union may apply to the superintendent for authorization to fund a charitable donation account (CDA) as approved by the National Credit Union Administration. The request to the superintendent should address the items listed in 17.19(2) “a” to “c.”

*a.* If the superintendent grants the request, the CDA must satisfy all of the conditions in 12 CFR 721.3(b)(2)(i) to (vii), including but not limited to the following:

(1) The book value of investments in all CDAs in the aggregate must be limited to 5 percent of a credit union's net worth at all times as measured at every call report.

(2) The assets must be held in a segregated custodial account and be specifically identified as a CDA.

(3) If a trust is chosen as the vehicle for the CDA, the trustee must be regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA, other than the credit union itself, must be either a registered investment adviser or regulated by the OCC.

(4) The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written agreement. The terms of the agreement must be consistent with the federal rule. The credit union's board of directors must adopt written policies governing the creation, funding, and management of the CDA that are consistent with the federal rule, must review the policies annually, and may amend them from time to time. Charitable contributions and donations can only be made to organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) Credit unions utilizing CDAs are required to distribute 51 percent of the total return on investment to one or more qualified charities no less frequently than every five years.

b. CDAs are investments that carry risk. It is expected that any credit union that makes this type of investment will conduct the necessary due diligence and retain the due diligence documentation for examiner review. The board must also document the investment strategies and risk tolerances and must account for the CDA in accordance with generally accepted accounting principles.

ITEM 5. Adopt the following new rule 189—17.21(533):

**189—17.21(533) Director, officer, or employee overdraft.** A state credit union may pay an overdraft of a director, officer, or employee of the state credit union on an account at the state credit union when the payment of funds is made in accordance with any of the following:

1. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

2. A written, preauthorized transfer of collected funds from another account of the account holder at the state credit union.

3. The overdraft is paid pursuant to an overdraft protection plan or courtesy pay program. Such payment is limited to one time per quarter, and the overdraft shall last no longer than ten days. Each credit union board of directors shall enact a policy regarding failure to comply with the provisions of this rule.

This rule is intended to implement Iowa Code section 533.205(7).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/18.